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ONEBEACON AMERICAN INSURANCE COMPANY
(FOR ITSELF AND AS SUCCESSOR IN INTEREST TO
COMMERCIAL UNION INSURANCE COMPANY)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN WARD and PIERCE WARD,
Plaintiffs,

v.

AMERICAN ZURICH INSURANCE
COMPANY, et al.,
Defendants.

No. 3:13-cv-03140-SI

HON. SUSAN ILLSTON

**STIPULATION AND ~~[PROPOSED]~~
ORDER TO RESCHEDULE PRETRIAL
PREPARATION DATES**

AS AMENDED

WHEREAS, on January 21, 2014, the Court issued a Pretrial Preparation Order setting case management and trial dates as indicated below.

WHEREAS, the underlying default judgment in the Personal Injury Action¹, which Plaintiffs now seek to collect in this insurance coverage action, is currently on appeal. On or about April 2, 2014, the Court of Appeal announced that oral argument was set for April 29, 2014. A decision on the appeal is expected by the end of July 2014.

¹ Patricia Ward v. Ajax Boiler, Inc., et al. (Alameda County Superior Court Case No. RG12626502) (“The Personal Injury Action”). On July 5, 2013, the Hon. Jo-Lynne Q. Lee denied Defendant Goss-Jewett’s Motion To Set Aside Entry Of Default/Default Judgment Against Defendant Goss-Jewett Co. of Northern California. Goss-Jewett has filed an appeal from this Court’s Order. That appeal is pending as Case Number A139306 in Division 3 in the First Appellate District.

WHEREAS, the issues in this insurance coverage action depend on how the appeal in the Personal Injury Action is resolved. Specifically, as previously advised, the insurer-defendants assert that the lack of notice prior to entry of default prejudiced them and renders the default uncollectable. *See, e.g., Earle v. State Farm Fire & Cas. Co.*, 935 F. Supp. 1076, 1082 (N.D. Cal. 1996) (post-trial tender was deemed prejudicial as a matter of law, therefore forfeiting coverage). If the appeal is granted and the default judgment is overturned, this obviously affects the insurers' argument concerning prejudice.

THEREFORE, the parties agree that the deadlines in this insurance coverage action should be continued so that the notice-prejudice issue can be briefed after the appeal is decided. The parties therefore propose the following briefing dates, setting the summary judgment hearing on this issue for October 31, 2014, and subsequent deadlines following therefrom.

The Parties also propose a further case management conference for August 15, 2014, to discuss the anticipated appellate decision and any affect it may have on the dates proposed herein.

ACCORDINGLY, the parties stipulate and respectfully request that the Court enter an Order adopting the following proposed modification of deadlines:

Event	Prior Dates	New Dates
Further Case Management	May 23, 2014 at 3:00 p.m.	August 15, 2014 at 3:00 p.m.
Motion for Summary Judgment re Notice Prejudice	June 20, 2014	September 19, 2014
Opposition to Motion for Summary Judgment re Notice Prejudice	July 7, 2014	October ³ 6 , 2014
Reply to Opposition to Motion for Summary Judgment re Notice Prejudice	July 14, 2014	October ¹⁷ 20 , 2014
Hearing re Motion for Summary Judgment re	July 25, 2014	October 31, 2014

Event	Prior Dates	New Dates
Notice Prejudice	at 9:00 a.m.	at 9:00 a.m.
Non-Expert Discovery Cutoff	October 31, 2014	December 9, 2014 January 2, 2015
Designation of Experts	September 26, 2014	November 21, 2014 December 1, 2014
Rebuttal (Experts)	October 13, 2014	December 15, 2014 ¹
Expert Discovery Cutoff	October 31, 2014	December 19, 2014 January 2, 2015
Last Day to File Dispositive Motions	October 31, 2014	January 9, 2015
Opposition to Motion for Summary Judgment	November 14, 2014	January 23, 2015
Reply to Opposition to Motion for Summary Judgment	November 21, 2014	January 30, 2015
Hearing re Motion for Summary Judgment	December 5, 2014 at 9:00 a.m.	February 13, 2015 at 9:00 a.m.
Pretrial Conference	January 27, 2015 at 3:30 p.m.	March 24, 2015 at 3:30 p.m.
Jury Trial Date	February 9, 2015 at 8:30 a.m.	April 6, 2015 at 8:30 a.m.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: March 28, 2014

EDISON, MCDOWELL, & HETHERINGTON LLP

By: s/ Raymond Tittmann

Raymond J. Tittmann
Jodi Swick

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ONEBEACON AMERICAN INSURANCE
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1 Dated: March 28, 2014

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7 JOHN AND PIERCE WARD

8 Dated: March 28, 2014

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15 COMPANY, ZURICH AMERICAN
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18 Dated: March 28, 2014

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1 Dated: March 28, 2014

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8 PROPERTY & CASUALTY INSURANCE
9 COMPANY, F/K/A AETNA INSURANCE
10 COMPANY

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13 **ORDER**

14 PURSUANT TO STIPULATION, IT IS SO ORDERED. AS AMENDED.
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21 DATED: 4/15/14



22 The Honorable Susan Illston
23 United States District Court Judge
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